

The management filed their written statement had controverted the claim of the workman and alleged that the workman was warned by the Chief Accounts Officer in the year 1976 but he did not improve upon his performance and failed to discharge his duty properly. He was insubordinate to his officers. He used to sit in the office with certain outsiders gossiping with them, in spite of repeated warnings. He was given a charge sheet to which he made vague replies. After the enquiries made by the Managing Director from various officers, it was considered opinion that services of such person should be dispensed with and the service of the workman were terminated as per the terms of appointment. He was offered one month's salary required as per the terms of appointment. On the basis of the pleadings filed by the parties, the following issues were framed by my learned predecessor on 14th December, 1979:—

1. Whether the termination of services of the workman was justified and in order ?
2. If not, to what relief is he entitled ?

I have heard the arguments put forth by the learned representatives of the parties and have carefully seen the evidence on the record and decided the issues as under :—

ISSUE No. 1 and 2

The management has relied upon Ex. M-1, the memo calling for explanation, Ex. M-2, the reply by the workman to this explanation, Ex. M-3 and Ex. M-4, the warning to the workman, Ex. M-5 is cause for the explanation of the workman, Ex. M-6 is reply to this explanation, Ex. M-8 the comments by the Accountant on which the explanation of the workman Ex. M-7, Ex. M-9 are the comments of the Chief Accounts Officer, who forwarded the case to the Managing Director, Ex. M-10 are the observations of the Managing Director whereby he sought the consent of the Chairman for ordering the termination of the services of the workman concerned. The only witness as examined on behalf of the management was Shri Duli Chand, Accounts Officer of the management. He produced a letter of appointment of the workman concerned which is Ex. M-12 and Ex. M-11 is the office order terminating the services of the workman. In his cross-examination the witness has admitted that he does not know whether the workman was offered an opportunity to defend himself or any domestic enquiry was or not held in this connection.

From the perusal of the record it is evident that the management wanted to get rid of the workman as soon as it was

or the other. The management found fault in the working of the workman concerned without considering the facts which the workman has to face and was required to perform his duties normally and in the given circumstances. Whatever explanation the workman has given was taken to be unsatisfactory and with a view to victimize him. He was never offered an opportunity to defend himself. It seems that the management had conspired against the workman and within a period of 2 months after a period of every 15 days the workman was called for his explanation and on his explanation which was in the opinion of the management unsatisfactory, he was warned and this process went on till at last on 6th February, 1978 his services were terminated under the guise of contract of service. In the terms of appointment letter issued to the workman. The above circumstances go to show that the order of termination passed by the management was prompted with an ulterior motive to absorb one of the relations of the Chief Accounts Officer, who is at present in the service of the management in place of the workman. This amounts to unfair labour practise which the law does not permit. The management has thus adopted the hire and fire tactics and their action does not seem to be bona fide. Rather this is a colourable exercise of the power under the contract of the service. This is a case of retrenchment. What constitutes retrenchment is *res integra*. In *State Bank of India V. N. Sundara Money-1976-3.C.S.R. 163* Krishna Iyer Judge, examined the definition of the expression retrenchment under section 2(00) to ascertain the elements which constitute retrenchment. It was observed as under :—

“A break-down of S-2(00) unmistakably expands the semantics of retrenchment. ‘Termination’ for any reason whatsoever are the key words. Whatever the reason, every termination spells, retrenchment. So the sole question is, has the employee's service been terminated? Verbal apparel apart the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated terms. To protect the weak against the strong, this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but

we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of section 25-F and section 2(oo). Without speculating on possibilities we may agree that retrenchment is no longer *terra incognita* but area covered by an expensive definition. It means 'to end, conclude, cease'."

As the condition precedent prescribed under section 25-F was not complied with the retrenchment was invalid and there was no order of termination in the eyes of law. There are numerous reported cases on this point where it has been held that when there was no compliance with the mandatory providing of section 25-F of the I.D. Act, the order of retrenchment becomes void *ab-initio*, and the retrenched employee in such circumstances must be deemed to be in service and as such it was not necessary to consider as to whether there was any justification for the order of retrenchment.

National Iron & Steel Co. Vs. State of West Bengal reported in A.I.R. 1967 S.C. page 1206. In this case the Supreme Court has held that where the mandatory provisions of section 25-F were not complied with, the order itself becomes invalid and inoperative and as such it was not necessary to consider the other points, namely whether there was justification of the impugned order of retrenchment, or as to where the workman was entitled to reinstatement with full back wages or whether the workman was entitled to some other compensation. I agree with the above made contention of the learned representative of the workman and after considering the respective submission of learned counsels appearing for the parties, it appears to me that if the condition precedent in order of retrenchment under section 25-F of the I.D. Act are not fulfilled, the order of termination is not effective at all but the same is void *ab-initio* and the relationship between the employer and the employee is not affected by such void retrenchment order and the employee continues in service despite the purported order of retrenchment. I, accordingly decide the issues against the right and set aside the impugned order. It is directed that the workman be reinstated forthwith and be paid full back wages from the date of impugned retrenchment till reinstatement minus any sum paid to the workman.

I answer the reference while returning the same in these terms.

Dated 30th January, 1980. BANWARI LAL DALAL,  
Presiding Officer,

Labour Court, Rohtak.

Endorsement No. 432, dated 18th February, 1950. Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,  
Presiding Officer,  
Labour Court, Rohtak.

No. 11(112)-3 Lab.-80/2301.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. G. M. Worsted, Private Ltd., Mathura Road, Faridabad.

BEFORE SHRI GURMESH PARKASH,  
PRESIDING OFFICER, LABOUR COURT,  
HARYANA, FARIDABAD.

Reference No. 81 of 1979.

SHRIMATI SHEELA DEVI, WORKING LADY  
AND THE MANAGEMENT OF M/S. G. M.  
WORSTED, PRIVATE LTD., MATHURA ROAD,  
FARIDABAD.

Present:

Shri Sagar Ram Gupta, with Shrimati Sheela Devi, workman lady.

No one is present on behalf of the management.

#### AWARD

This reference No. 81 of 1979 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/236-79 under section 10(i)(c) of the Industrial Disputes Act, 1947, for adjudication the dispute existing between Smt. Sheela Devi Workman Lady and M/s. G. M. Worsted Private Ltd., Mathura Road, Faridabad. The terms of the reference was:—

Whether the termination of services of Shrimati Sheela Devi was justified and in order? If not, to what relief she is entitled?

After receiving this reference before this court through her authorised representative, but no one was present on behalf of the management. Though the notice was served on them, this notice was received by the Chowkidar of the factory and in token of receiving this notice he signed on the office copy of the notice. In these circumstances it was ordered by me on 16th January, 1980, that *ex parte* proceedings be held against the management.

Today the case was fixed for evidence of the working lady. She examined herself as

W.W. 1. She stated before this court on oath that she was working in this factory since last 10 years at the post of Sweeper, her wages was Rs. 125 per mensem. He further stated that when she demanded Rs. 185 per month from the management because the Government has raised the wages of the Sweepers. The management got annoyed and turned her out. She further stated that when she made a complaint before the Labour Officer, the management refused to take her back in spite of the pursuasion by the Conciliation Officer. At the end she stated that she served the demand notice Ex. W.W. 1/13 on the management. She also stated that she is unemployed since then and wants to joint the same service again. After examining herself she closed her evidence.

I have gone through the file and the statement of W.W. 1. There is no reason why the solatory statement of W.W. 1 on oath should not be relied upon specially when the management choosed not to defend this reference before this court. Thus I hold that the termination of the services of Shrimati Sheela Devi was unjustified and was also not in order, she is entitled to reinstated with full back wages.

Dated 15th February, 1980.

GURMESH PARKASH,  
Presiding Officer,  
Labour Court, Haryana  
Faridabad.

Endorsement No. 292, dated 15th February, 1980.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

GURMESH PARKASH,  
Presiding Officer,  
Labour Court, Haryana,  
Faridabad.

The 25th February, 1980.

No. 11(112)-3 Lab.-80/2428.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Fabex International, Sector 27-C, Faridabad.

BEFORE SHRI NATHU RAM SHARMA,  
PRESIDING OFFICER, INDUSTRIAL  
TRIBUNAL HARYANA, FARIDABAD.

Reference No. 251 of 1978.

between

SHRI KARIM KHAN, WORKMAN AND THE  
MANAGEMENT OF M/S. FABEX INTER-  
NATIONAL, SECTOR 27-C, FARIDABAD.

Present:

Shri P. K. De, for the workman.

Shri Manjeet Singh, for the management.

AWARD

1. By order No. ID/33722, dated 19th July, 1978, the Governor of Haryana, referred the following dispute between the management of M/s. Fabex International, Sector 27-C, Faridabad and its workman Shri Karim Khan, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Karim Khan was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, notices were issued in the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 17th March, 1979:—

- (1) Whether there is relation of Master and Servant between the parties?
- (2) Whether the termination of services of the workman was justified and in order?
- (3) Relief.

And the case was fixed for the evidence of the workman. The workman obtained 7 or 8 adjournments, but lastly the dispute was settled. The workman received a sum of Rs. 400 only in full and final settlement and gave up his dispute. I, therefore, give my award that the termination of services of the workman is justified and in order. He is not entitled to any relief.

Dated 12th February, 1980.

NATHU RAM SHARMA,  
Presiding Officer,  
Industrial Tribunal,  
Haryana, Faridabad.

Endst. No. 160, dated 19th February, 1980.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act.

NATHU RAM SHARMA,  
Presiding Officer,  
Industrial Tribunal,  
Haryana, Faridabad.